IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.3.2007

CORAM:

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

and

THE HONOURABLE MR.JUSTICE S.TAMILVANAN

W.P.Nos.37000 of 2006, 37021 of 2006, 37022 of 2006, 32958 of 2006, 36972 of 2006, 39366 of 2006, 40388 of 2006, 40995 of 2006, 41000 of 2006, 41001 of 2006, W.P.(MD).Nos.9279 of 2006, 9806 of 2006 and 9454 OF 2006

and

M.P.Nos.1 and 2 of 2006 in W.P.No.37000 of 2006,
M.P.Nos.1, 2 and 3 of 2006 in W.P.No.37021 of 2006,
M.P.No.2 of 2006 in W.P.No.37022 of 2006,
M.P.No.2 of 2006 in W.P.No.32958 of 2006,
M.P.Nos.1,2 and 3 of 2006 in W.P.No.36972 of 2006,
M.P.Nos.1 and 2 of 2006 in W.P.Nos.39366 of 2006,
M.P.Nos.1 and 2 of 2006 in W.P.No.40388 of 2006,
M.P.Nos.1 and 2 of 2006 in W.P.No.40995 of 2006,
M.P.No.2 of 2006 in W.P.No.41001 of 2006,
M.P.Nos.1 and 2 of 2006 in W.P.(MD)No.9279 of 2006,
M.P.Nos.1 and 2 of 2006 in W.P.(MD).No.9806 of 2006 and
M.P.Nos.1 and 2 of 2006 in W.P.(MD)No.9454 of 2006

K.Sathyamurthi ..Petitioner in W.P.37000/06
D.S. Makkalanban ..Petitioner in W.P.37021/06
A. Sankara Gomathy ..Petitioner in W.P.37022/06
K. Sathyamurthi ..Petitioner in W.P.32958/06
N. Thirumalai ..Petitioner in W.P.36972/06
R. Umadevi ..Petitioner in W.P.39366/06

Association of NTE/SET
qualified Teachers and
Candidates (Regd. under
the Societies
Registration Act)
rep by its President
Mr.E. Sugirthakumar
No. 85 Pilliayar Koil St,Kattor
Ram Nagar, Coimbatore ..Petitioner in W.P.40388/06

N. Sailapathi ..Petitioner in W.P.40995/06

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1.G. Sinthiah
2.A. Shanmugam
3.M. Karuppiah
4.D. Anbalagan
5.A. Guljarbanu
6.M.S. Selvaraju
7.S. Dharmaraj
8.V. Bala Subramanian
9.V. Ganesan
10.G. Pushparaju ..Petitioner in W.P.41000/06 and W.P.41001/06

V. Mohandass Ravi ..Petitioner in W.P.9279/06

M. Arumugam ..Petitioner in W.P.9806/06

T. Bhaskar ..Petitioner in W.P.9454/06

vs.

1.The State of Tamil Nadu
rep. by its Secretary to Government,
Higher Education Department,
Fort St.George,
Chennai 600 009. ... Ist Respondent in W.P.Nos.37000, 39366, 40388, 40995/06 , 9279/06, 9806/06 & 9454/06 and 3rd Respondent in W.Ps.37021, 32958 and 36972/06

2.The Chairman,
Teachers Recruitment Board,
E.V.K.Sampath Maligai,
D.P.I.Compound, Chennai 600 006. ... 2nd Respondent in W.P.Nos. 37022, 40388, 40995, 41000/06 and W.P. 9806/06,41001/06
3rd Respondent in W.Ps.9279/06

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3.University Grants Commission,
Rep. by its Chairman,
Bahadurshah Zafar Marg,
New Delhi 110 022. ..ISt Respondents in W.Ps. 37021, 32958 and 36972/06
3rd Respondent in W.P.40995/06 W.P. 9806 and 9454/06, 4th Respondent in W.P.40388/06, W.P.9279/06

The State of Tamilnadu
Rep by its Secretary
Education Department
Fort St. George,
Chennai-9. ... ISt Respondent in W.P.Nos. 37022, 41000 and 41001/06

Union of India
rep by its Secretary to Government
Ministry of Human
Resources Development
Department, New Delhi. ... 2nd Respondent in W.Ps. 37021/06, 32958, and 36972/06

4. M. Prabhakar
5. K.S. Ganesh Sundaram
6. K.S. Nagarajan
7. Y. Joha Ilavarasu
8. M. Avinash
9. P. Jeevagan
10. S. Ramkumar
11. P. Devi Sri
12. J. Sujatha
13. S. Sivakumar

(R4 to R13 impleaded as
per order of Court dated 25.9.2006
in M.P.No.3/06 in
W.P.No. 32958/06) ... Respondents 4 to 13 in W.P.NO.32958/06

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The Director of Collegiate
Education, College Road,
D.P.I. Compound,
Chennai. ... 2nd Respondent in W.P.39366 and W.P.9279/06, 3rd Respondent in 40388/06 and W.P.41000 and 41001/06

The Teachers Recruitment
Board, Rep by its Member Secretary
EVK Sampath Building
College Road,
Chennai-6 ... 3rd Respondent in W.P.No. 39366/06

The Registrar
University of Madras
Chepauk Campus
Chepauk,
Chennai-5 ... 4th Respondent in W.P.No.40995/06

The Secretary
Teachers Recruitment Board
E.V.K. Sampath Malligai,
D.P.I. Compound
Chennai-6. ... 2nd Respondent in W.P.9454/06

Writ Petition No.37000/2006 is filed under Article 226 of the Constitution of India praying for issuance of writ of Certiorarified Mandamus 1. calling for the proceedings culminating in notification issued by the 2nd respondent in Advt.No.4/2006-07 dated 18.9.2006 published in Tamil Daily, Dinakaran on 18.9.2006 pursuant to G.O.Ms.No.197, Higher Education (F2) Dept, dated 5.7.2006 proposing to recruit lecturers for appointment in Government Arts and Science colleges and Colleges of Education and the prospectus prescribing the qualification and the Scheme of selection and quash the same and direct the respondents to conduct written examination and select the candidates by giving preference to the candidates having PG degree with NET/SLET for the post of Lecturers in Govt.Arts and Science Colleges and Colleges of Education.

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2.Writ of Certiorari call for the proceedings of the ISt Respondent made in F.No.1-1/2002 (P-S) Exempt dated 14.6.2006 and quash the notification dated 14.6.2006. (W.P.Nos. 37021, 32958 and 36972/06)

3. to call for the records in connection with the notification of (2006-2007) issued by the 2nd respondent portion of para 11 and quash the same and consequently direct the respondents to appoint the petitioner as lecturer in (Zoology) in W.P. 37022/06)

4. Writ of certiorarified Mandamus calling for the proceedings of the ISt respondent issued in G.O.Ms.No. 197 Higher Education (F2) Department dated 5.7.2006 and the consequential notification issued by the 2nd respondent in Advt. No.4/06-07 dated 18.9.2006 published in Tamil Daily Dinakaran on 18.9.06 proposing to recruit Lecturer for appointment in Government Arts and Science Colleges and Colleges of Education and the prospectus prescribing the qualification and the scheme of selection and quash the same and direct the respondents to conduct written Examination and select the candidates by giving preference to the candidates having P.G. Decree with NET/SLET for the Post of Lecturer in Government Arts and Science Colleges and Colleges of Education (W.P.40388/06)

Writ of Certiorari to call for the records of the ISt Respondent in G.O.Ms.No.197 dated 5.7.2006 issued by the ISt respondent and quash the same. (W.P.No.40995/06)

5. Writ of Certiorari calling for the records of the ISt respondent pertaining to G.O.Ms.No.197 Higher Education (F2) Department dated 5.7.2006 and quash the clause 6 (e) of the above G.O. (W.P.9279/06) and

6. Writ of Certiorari calling for the records relating to the G.O.Ms.No.197 dated 5.7.2006 issued by the Ist Respondent and the Prospectus (2006-2007) issued by the 2nd respondent and quash the para 6 clause (e) in G.O.Ms.No.197 dated 5.7.2006 of the ISt respondent and para 11 of the Prospectus of the 2nd respondent (W.P.9454/06) respectively.

Petition filed under Article 226 of the Constitution of India to issue a writ of Mandamus directing the respondents to award marks for waiting in the employment exchange after registration of qualification by the Petitioner as per Rule 7 of Procedures of selection prescribed by the Government of Tamilnadu the Teachers Recruitment Board in G.O.Ms.No.1223 dated 12.7.88 and G.O.Ms.No.477 dated 4.5.89 and add the same immediately after merit lists is evolved and issue a further direction to the respondents to call the candidates for interview for selection tot he post of Lecturer in Mathematics in Government Colleges at the ratio of 1:3 vacancies as per the Judgment of the Honourable Supreme Court

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reported in 1994 Supreme Court page 2166 and select and appoint the petitioner as Lecturer in Government Colleges (W.P.No.39366/06)

Petition filed under Article 226 of the Constitution praying this Court to issue a Writ of Declaration declaring that clause 11 of the Prospectus for the direct recruitment of Lecturer for Government Arts and Science Colleges of Education 2006-2007 issued by the 2nd and 3rd Respondents as arbitrary unjust and violating of Article 14 of the constitution of India so far as the Petitioners are concerned (W.P.41000/06)

Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Mandamus directing the Respondents to give due weightage to the Employment Exchange registration Seniority and persons who possessed M. Phil qualification prior to 1993 without imposing the condition of requirement of National Eligibility Test/State Level Education to the Post of Lecturer in the Government Arts And Science Colleges and Colleges of Education (W.P.NO.41001/06)

Writ of Certiorari calling for the records relating to G.O.Ms.No.197 Higher Education (F2) Department dated 5.7.2006 issued by the first respondent and quash the same. (W.P.NO.9806/06)

Mr.R. Muthukumarasamy (SC) for Mr.R.Bharath Kumar Counsel for Petitioner in W.P.No.37000/2006, 32958/06 , 40388/06

Mr.M.V. Krishnan, Counsel for Petitioner in W.P.40995/06

Mr.P. Viswanathankakkan for Petitioner in W.P.37021/06, 36972/06

Mr.S. Ilamvaludhi for Petitioner in W.P.37022/06

Mr.S. Silambannan for M/s. Gladys Daniel in WPs.41000, 41001/06

Mr. Saseedharan Counsel for Petitioner in W.P.39366/06

Mr.R. Subramanian, Counsel for Petitioner in W.P.9279/06

Mr.D. Saravanan in W.P.9806/06

Mr.A. Sankara Subramanian in W.P.9454/06

Mr.R. Viduthalai A.G. for Mr.Mohan Spl. G.P. (Edun.) for the State in each petition.

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Mr.R. Krishnamurthi (SC) for Mr.P.R. Gopinthan for R3 in W.P.37000/06
RR1 & 2 in W.P.37021/06, 32958/06, 36972/06

R4 in W.P.40388/06

R3 in W.P.40995/06, 9806/06, 9454/06
R4 in W.P.9279/06

COMMON ORDER

F.M.IBRAHIM KALIFULLA,J.

In all these Writ Petitions the petitioners seek to challenge the prospectus issued by the Teachers Recruitment Board in Advertisement No.4/2006-07 published in Tamil Daily `Dinakaran' dated 18.9.2006 pursuant to G.O.Ms.No.197, Higher Education (F2) Dept, dated 5.7.2006. Under the above referred to G.O., as well as the notification the respondents proposed to recruit Lecturers for appointment in Government Arts and Science Colleges and Colleges of Education.

2. In W.P.No.32958/2006 the petitioner seeks for issuance of a writ of Certiorari to call for the records of the proceedings of the University Grants Commission made in F.No.1-1/2002 (PS) Exemp dated 14.6.2006 and quash the said notification dated 14.6.2006. That was a notification by which an amendment was issued by the University Grants Commission (hereinafter referred to as `U.G.C.') to the University Grants Commission (Minimum Qualifications required for the appointment of Career Advancement of Teachers in Universities and Institutions affiliated to it) Regulation, 2000. The amendment was to the effect,

> "NET shall remain the compulsory requirement for appointment as Lecturer for those with post-graduate degree. However, the candidates having Ph.D.degree in the concerned subject are exempted from NET for PG level and UG level teaching. The candidates having M.Phil degree in the concerned subject are exempted from NET for UG level teaching only."

It was pursuant to the above amendment to the U.G.C. Regulations, the impugned notification in G.O.Ms.No.197 dated 5.7.2006 as well as the Advt.No.4/2006-07 dated 18.9.2006 for recruitment of Lecturers in Government Arts and Science Colleges and Colleges of Education came to be issued by the State Government.

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3. In W.P.No.32958/2006 the main challenge is that the amendment exempting Ph.D. from NET and SLET for all P.G. and U.G. courses and M.Phil for U.G. courses was irrational and is contrary to the well settled principle set down by the Hon'ble Supreme Court as regards the possession of NET or SLET as reported in AIR 1995 SC 336(UNIVERSITY OF DELHI v. RAJ SINGH). In view of the challenge made to the said amendment to the U.G.C.Regulations the petitioners in other writ petitions who seek to challenge the Advt.No.4/2006-07 apart from the basic challenge as regards the exemption granted to Ph.D. and M.Phil from holding NET or SLET as provided in the amendment to the U.G.C.Regulations have also made the challenge on other grounds, namely, weightage marks awarded to holders of Ph.D and M.Phil with or without NET or SLET.

4. In W.P.No.39366/2006 the challenge is also on the ground that contrary to the procedure rules prescribed for recruitment to be made by the Teachers Recruitment Board no weightage for Employment Exchange registered candidates who were not able to secure any employment till this date has been provided.

5. The main arguments on behalf of the petitioners was made by Shri R.Muthukumarasamy, learned senior counsel appearing for the counsel for the petitioners in W.P.Nos.32958/2006 and 40388/2006. In the course of his submissions the learned senior counsel contended that as early as in the year 1991 the prescription of NET or SLET as an added qualification for the post of Lecturer came to be introduced in the U.G.C.Regulations which was the subject matter of challenge before the Delhi High Court and on dismissal by the said High Court the matter went before the Hon'ble Supreme Court and the Hon'ble Supreme Court upheld the decision of the Delhi High Court in the decision reported in AIR 1995 SC 336(UNIVERSITY OF DELHI V. RAJ SINGH). By referring to paragraph 9 of the decision of the Hon'ble Supreme Court, learned senior counsel contended that the prescription of possession of NET or SLET was found to be a very essential eligibility criteria for the post of Lecturer even in respect of M.Phil and Ph.D.qualified candidates. According to the learned counsel, by way of amendment to the 1991 Regulations, once in 1995, 1998, 2000 and 2002 some relaxation was shown by U.G.C., itself in respect of holders of M.Phil and Ph.D. candidates. The learned counsel pointed out that in the 1995 amendment possession of NET and SLET was exempted for those who passed M.Phil and Ph.D. prior to 31.12.93, that in the amendment of the year 2000 the exemption was modified to the effect that the Ph.D. candidates upto the year 2000 were also granted the said benefit which was subsequently extended for the year upto 2002 insofar as Ph.D. holders alone. By referring to the above amendments and the decision of the Hon'ble Supreme Court, learned

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senior counsel for the petitioners contended that the present action of the U.G.C. in once and for all exempting the Ph.D.holders from possessing NET or SLET for P.G. and U.G. courses and the M.Phil candidates for U.G.course was made without any basis and thereby unsettled the settled proposition of law held by the Hon'ble Supreme Court.

6. The learned senior counsel by referring to the interim report of the Committee constituted by the U.G.C., dated 3.4.2006 contended that the said report did not contain any reason for making its recommendations to grant the exemption for Ph.D. and M.Phil. degree holders based on which the amendment came to be made in the U.G.C. regulations on 14.6.2006. The learned senior counsel therefore contended that the amendment dated 14.6.2006 is liable to be set aside.

7. Alternatively, the learned senior counsel contended that the grant of weightage marks in the impugned G.O.Ms.No.197 dated 5.7.2006 and the consequential Advt.No.4/2006-07 dated 18.9.2006 were irrational, arbitraty and has no nexus to the object to be achieved and therefore, the said notification as well as the advertisement are liable to be set aside. Elaborating the submission the learned senior counsel contended that under the G.O., while seeking for recruitment the State Government wanted to assess the merits of the candidates merely going by the certificates without holding any written examinations. The learned senior counsel after referring to the weightage marks prescribed in the G.O., as well as the prospectus submitted that by merely granting marks for holders of Ph.D.degree and M.Phil degree they would gain a march over all other candidates and thereby all equals would be treated unequally and thereby, depriving the members of the petitioner association who are Post-graduate degree holders with NET or SLET from getting a fair treatment in the matter of selection. To demonstrate the absurd results that are likely to occur based on the weightage marks provided under the G.O., the learned senior counsel pointed out that in paragraph 6(e) of G.O.Ms.No.197, dated 5.7.2006 apart from marks provided for experience, the marks provided for possessing different qualifications will result in total exclusion of other P.G. candidates who possess NET or SLET. According to the learned senior counsel, irrespective of a candidate securing the highest marks for research contribution, books and articles published as well as in the interview, having regard to the high level of marks allocated for mere possession of Ph.D. qualification, M.Phil qualification and such persons possessing SLET or NET would totally deprive the P.G. candidates with SLET OR NET outside the scope of selection. The learned senior counsel also pointed out that the subsequent notification dated 11.8.2006 in making an amendment to para 6(e) of the earlier notification dated 5.7.2006 would also

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result in similar disadvantage to the P.G.degree holders with NET or SLET and therefore, such amendments also does not cure the material defects in the impugned notification by way of executive order.

8. The learned senior counsel relied upon the decisions reported in 2006 (10) SCC 1 (RELIANCE AIRPORT DEVELOPERS (P) LTD., v. AIRPORTS AUTHORITY OF INDIA AND OTHERS), AIR 1995 SC 336 (UNIVERSITY OF DELHI v. RAJ SINGH), 1996 (6) SCC 282 (SECY.(HEALTH) DEPTT. OF HEALTH & F.W. AND ANOTHER v. Dr.ANITA PURI AND OTHERS) and 2003 (5) SCC 341 (SECY., A.P.PUBLIC SERVICE COMMN. v. Y.V.V.R.SRINIVASULU) in support of his submissions.

9. The sum and substance of the submissions of the learned senior counsel is that when possession of P.G.qualification with M.Phil or Ph.D. is the eligibility criteria to apply for the post of Lecturer in Government Arts and Science Colleges and Colleges of Education, the provision of weightage marks for possession of Ph.D. and M.Phil alone or with NET or SLET would amount to equals being treated unequally and thereby, calling for interference with the said impugned proceedings in these writ petitions.

10. Mr.R.Subramanian, learned counsel appearing for the petitioner in W.P.(MD)No.9279/2006 while adopting the arguments of Mr.R.Muthukumarasamy, also contended that when once a basic qualification prescribing the eligibility to apply is prescribed any weightage for additional qualification cannot be made. According to the learned counsel under the U.G.C.Regulations of 2000 procedure has been prescribed under para 3.1.0 as to how recruitment should be made by way of selection for the post of Lecturer in Government Colleges and that as per the said procedure when selection committee is constituted the process of selection should involve only the assessment of aptitude for teaching and research, ability to communicate clearly and effectively and ability to analyse and discuss and that the prescription of weightage marks would be contrary to the U.G.C.Regulations and therefore, on this ground, as well the impugned notification of the State Government in G.O.Ms.No.197 dated 5.7.2006 as well as the Advt.No.4/2006-07 are liable to be set aside. The learned counsel relied upon the decision reported in 2006 (6) SCC 474(STATE OF U.P. V. OM PRAKASH)in support of his submission.

11. Mr.S.Silambanan, learned counsel appearing for the petitioners in W.P.Nos.41000 and 41001 of 2006 submitted that clause 11 of the prospectus issued, pursuant to G.O.Ms.No.197 prescribing weightage marks are liable to be set aside inasmuch as when once the U.G.C., held that M.Phil holders who secured the said degree prior to 31.12.93 need not possess SLET or NET to apply for the post of Lecturer, the weightage of marks for M.Phil holders

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with NET or SLET would cause grave injustice to such M.Phil candidates who do not possess NET or SLET.

12. Mr.R.Saseetharan, learned counsel appearing for the petitioner in W.P.No.39366/2006 was aggrieved insofar as the notification did not provide weightage marks for candidates who registered themselves with Employment Exchange and who were not able to secure any employment in the State. According to the learned counsel, the procedure Rules of Teachers Recruitment Board provides for award of weightage marks depending upon the number of years of waiting after the registration in the Employment Exchange with a maximum of 8 marks and the non-provision of such weightage marks in the G.O.Ms.No.197 dated 5.7.2006 or the Advt.No.4/2006-07 and the prospectus relating to the said advertisement being contrary to the procedure rules are liable to be interfered with. According to the learned counsel when once by G.O.Ms.No.1357 dated 26.9.90 the State Government decided to entrust the task of selection of candidates for the post of Lecturers with the Teachers Recruitment Board by reconstituting the Board, the procedure rules relating to Teachers Recruitment Board would automatically apply and therefore, the prescription of weightage marks for the candidates registered with the Employment Exchange ought to have been made.

13. Mr.V.Viswanathan Kakkan, learned counsel appearing for the petitioner in W.P.Nos.36972 and 37021/2006 while adopting the arguments of the other learned counsel contended that the petitioners passed M.Phil with NET which is more or less like a degree conferred by the Universities and therefore, due recognition should have been granted for holders of NET or SLET. The learned counsel therefore contended that the dilution of the qualification for the post of Lecturers for the candidates who do not possess NET or SLET would create serious impact upon the rights of the petitioners and therefore, the impugned proceedings are liable to be set aside.

14. The other learned counsel appearing for the petitioners in the other writ petitions adopted the arguments of Mr.R.Muthukumarasamy, learned senior counsel and other learned counsel.

15. As against the above submissions, the learned Advocate General Mr.R.Vidhuthalai, representing the State Government as well as Teachers Recruitment Board, the second respondent formulated his submissions on three aspects, namely,

(i)The comparative weightage of marks given to various academic qualifications, eligibility criteria, intellectual pursuits and teaching experience is neither

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arbitrary nor discriminatory and do not offend Articles 14 or 16.

(ii)The challenge to the Notification issued by U.G.C. is liable to be rejected in view of the Judgment of the Division Bench of this Hon'ble Court in W.P.No.21345/06 dated 10.07.2006.

(iii)The weightage of marks given to Ph.D. qualification is appropriate and commensurate with the academic excellence attached to such high qualification.

16. According to the learned Advocate General, Ph.D. qualification being a higher qualification than M.Phil or P.G. qualification, there is nothing wrong in giving higher weightage marks for passing of such qualification. It was also contended by the learned Advocate General that under the U.G.C.Regulations by way of career advancement programme whenever the Lecturer beyond the Selection Grade would aspire for the post of `Reader', the prescribed qualification being Ph.D., in the interest of the students it was desirable to go in for the candidates with Ph.D. as that would enable the State to organise its educational pattern more effectively in the interest of the students. Therefore, the learned Advocate General contended that the prescription of higher marks for Ph.D. holders cannot be found fault with. The learned Advocate General also contended that even as per the U.G.C.Regulations, 1998 there is no prescription for holding a written examination and that the selection for the post of Lecturers have to be made only by a duly constituted selection committee and therefore, the non-prescription of the written examination would not vitiate the impugned notification as well as the prospectus and advertisement.

17. In this context, learned Advocate General relied upon G.O.Ms.No.111 dated 24.3.99 wherein the procedure for recruitment and the prescription of qualifications have been set out in line with the U.G.C.Regulations. According to the learned Advocate General, G.O.Ms.No.1357 dated 26.9.90 is applicable only for recruitment of school teachers of the Government schools and the schools run by local bodies which is not applicable to a selection made for the post of Lecturers in Government Arts and Science colleges and Colleges of Education.

18. As far as the challenge made in W.P.No.32958/2006 to the U.G.C. amendment dated 14.6.2006, the learned Advocate General contended that having regard to the judgment of the Division Bench of this Court dated 10.7.2006 passed in W.P.No.21345/2006 upholding the said notification the challenge to the very same notification cannot be made in the present writ petition.

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19. The learned Advocate General therefore submitted that no interference is called for.

20. Mr.R.Krishnamurthi, learned senior counsel appearing for the U.G.C. mainly contended that in the light of the earlier order of this Court dated 10.7.2006 passed in W.P.No.21435/2006 the writ petition challenging the impugned letter of the U.G.C. dated 14.6.2006 cannot be maintained.

21. Heard the learned counsel for the respective parties and perused the materials.

22. At the outset while dealing with the challenge made in W.P.No.32958/2006 we find that the challenge to the very same notification of the U.G.C. came up for consideration before the First Bench of this Court in W.P.No.21435/2006. The writ petition was dismissed by the First Bench in its order dated 10.7.2006. After referring to the notification details contained in the notification dated 14.6.2006 the First Bench has held as under:

> "As per the above amended regulation, the candidates having Ph.D. degree in the concerned subject are exempted from appearing for the National Eligibility Test for appointment to the PG and UG level teaching posts. In our opinion, the writ petition cannot be entertained at the instance of the petitioner, as she is not a candidate either affected or likely to be affected by the amended regulation and is not a person aggrieved to maintain a public interest litigation. That apart, the University Grants Commission is the body to prescribe the minimum eligibility norms and qualifications for appointment to the post of teachers at the PG and UG level and the decision taken by such an expert body cannot be interfered with by the Courts, as the Courts are not expert in the field. In academic matters, it will be always desirable for the Courts to leave such decision to the expert body. On facts, it is seen that the decision to exempt the candidates having Ph.D degree in Eligibility Test for appointment to the PG level and UG level teaching posts and the decision to exempt the candidates having M.Phil degree in the concerned subject from appearing for the National Eligibility Test for appointment to the UG level teaching post were taken by the University Grants Commission in its meeting held on 11.6.2006 on the basis of an interim report of the Committee constituted by the Ministry of Human Resources Development under the

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Chairmanship of Prof. Bhalchandru Munekar, Member, Planning Commission, New Delhi.

2. In view of the above, we find absolutely no reason to entertain the writ petition. Accordingly, the writ petition is dismissed. Consequently, M.P.Nos.1 & 2 of 2006 are also dismissed."

Inasmuch as the Division Bench has taken note of all the contentions raised while challenging the above notification of the U.G.C. dated 14.6.2006 and has declined to entertain the writ petition, we do not find any scope to grant any relief in W.P.No.32958/2006. Therefore, the challenge made to the said notification cannot be examined once over again in the present writ petitions.

23. When we consider the challenge made to G.O.Ms.No.197 as well as the consequential advertisement and the prospectus the main thrust of the submissions of the petitioners centers around the prescription of weightage marks provided in paragraph 6(e) of G.O.Ms.No.197 dated 5.7.2006 as amended by the executive order dated 11.8.2006 as well as the prospectus issued based on the above referred to orders. In view of the correction carried out in the order dated 11.8.2006 the ultimate prescription of marks as provided in paragraph 11 of the prospectus can be referred which is to the following effect.

`11.Scheme of Selection:

Marks will be awarded to all candidates based on the information given by them in their Application forms, as per the criteria given below:

1	Teaching experience in Universities/Government/aided colleges/Self financing colleges in the approved post (1 mark for each completed year)	Maximum 15 marks
2	Ph.D qualification(obtained before 13.10.2006	12 marks
3	M.Phil/Ph.D with SLET/NET qualifications (obtained before 13.10.2006)	6 marks

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1	Teaching experience in Universities/Government/aided colleges/Self financing colleges in the approved post (1 mark for each completed year)	Maximum 15 marks
4	Books/Articles published(referred)in the relevant Subject (2 marks per book and 1 mark per Article)	10 marks
5	Interview marks Test of Subject knowledge/ Teaching ability	7 marks
	Total	50 marks

24. Before examining the various submissions made as regards the prescription of weightage marks we wish to stear clear of the contentions, namely, that without written examinations selection of candidates ought not to have been attempted by the State. As far as the said contention is concerned even while referring to the U.G.C.Regulations 2000 what we find is that in respect of recruitment of Lecturers for Government Colleges, the State should constitute a Selection Committee consisting of three Special experts apart from the Principal and Head of the Department in the said Selection Committee. It is also mentioned that the process of selection should involve the assessment for aptitude for teaching and research, ability to communicate clearly and effectively, ability to analyse and discuss. It is provided that ability to communicate, to be assessed by requiring the candidate to participate in a group discussion or by expertise to as a class room student wherever it is possible. Nowhere in the regulations it is even remotely suggested that a written test should be mandatorily prescribed while making a selection for the post of Lecturers. Therefore, in the absence of any such prescription or the regulations even remotely suggesting any such test to be conducted while making a selection we are unable to appreciate or accept the contention of the petitioners that there ought to have been a written examination while making the selection.

25. Moreover, the analysis to be made by the selection committee as stated in the U.G.C.Regulations in the process of selection, namely, by way of assessment of aptitude for teaching and research, ability to communicate with clarity and effectiveness or ability to analyse and discuss are all areas which can be more effectively carried out and assessed in an oral interview of a candidate along with the credentials possessed by such candidate.

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In this context it will have to be remembered that for the post of Lecturers the minimum qualification itself is Post-graduate with M.Phil or Ph.D. Therefore, we are unable to hold that only by holding a written examination such an analysis in respect of any candidate can be made and not otherwise. We therefore reject the said contention of the petitioners.

26. As far as the prescription of weightage marks are concerned it consists of 5 different heads. The weightage of marks for teaching experience was not seriously under challenge by the petitioners in these writ Petitions. The main challenge was in the award of higher marks for the holders of Ph.D qualification and candidates with Ph.D and M.Phil with SLET or NET. At the outset, we are really surprised to note how a Ph.D candidate with SLET or NET can be awarded a lesser mark of 6 as against the award of 12 marks for mere Ph.D.degree holders. It was vehemently contended by the learned counsel for the petitioners and it is also a matter of common knowledge that securing a certificate of NET or SLET after successfully undergoing the said test is an arduous task. The statistics as furnished by the U.G.C. itself in its communication dated 11.10.2006 furnishing the total number of candidates registered for NET who appeared and qualified between December 1989 and December 2005 disclose that as against the total registration of 48,163 in 1989 and 1,35,013 in December 2005, the number of candidates appeared was in the order of 37,131 in December 1989 and 1,09,873 in December 2005. Out of them, those who qualified were 2,343 in December 1989 and a maximum of 8,363 in December 2005. The total percentage of qualified candidates ranged between 2.23 per cent to a maximum of 12.29 per cent. The average percentage was in the order of 5 per cent. Therefore, the above statistics only goes to show that for securing NET or SLET one has to undergo a very rigorous exercise inasmuch as in the decision of the Hon'ble Supreme Court reported in AIR 1995 SC 336 while referring to Mehrotra Report the Hon'ble Supreme Court has held in para 9 that such test would have the benefit of removing disparities in standards of examination at the Master's level between different Universities. The Hon'ble Supreme Court also acknowledged the Mehrotra Committee's report that by such a step local influence would be minimised and the eligibility zone for recruitment would become wider. However, the Hon'ble Supreme Court also noted that the eligibility test was only to determine the eligibility of the academically qualified person. When such is the accepted recognition for holders of certificate of NET or SLET as approved of by the Hon'ble Supreme Court it runs beyond one's comprehension how Ph.D. with SLET or NET qualification could only be awarded 6 marks while candidates with mere Ph.D. alone can be awarded a higher weightage mark of 12. Therefore, on the face of it such a prescription contained in para 11 of the prospectus is incongruous and therefore, we are not in a position to approve of the same.

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27. One other relevant factor to be considered is that even as per the amended regulations of U.G.C. dated 14.6.2006, a P.G. qualified person with NET or SLET is entitled to compete along with a Ph.D. degree holder or a M.Phil degree holder with SLET or NET. In other words, all the above three categories with the above qualifications are treated on par while going in for the selection for the post of Lecturers. If that be so, if a Ph.D. or for that matter a Ph.D. with NET or SLET along with M.Phil with NET or SLET can be awarded some weightage marks for possessing such qualifications, there is no reason why a P.G. qualified person possessing NET or SLET shall be excluded without any special reason.

28. In other words, when as per the U.G.C.Regulations all the above three categories are basically eligible for being considered for the post of Lecturers, a different treatment cannot be meted out to a P.G. qualified person alone even when when possesses NET or SLET in the matter of award of weightage marks.

29. At this juncture it will be appropriate to refer to the decision of the Hon'ble Supreme Court rendered in STATE OF UP. AND ANOTHER v. OM PRAKASH AND OTHERS (2006 (6) SCC 474). The Hon'ble Supreme Court has referred to an earlier decision of the Supreme Court reported in 1996 (6) SCC 282 (SECY.(HEALTH) DEPTT.OF HEALTH & F.W. v. Dr.ANITA PURI where in it has been held as under in para 17.

> "17.In Secy.(Health), Deptt. of Health & F.W. v. Dr.Anita Puri this Court held that preferential qualification does not as of right entitle to selection. In that case the advertisement inviting applications for the posts of Dental Officer prescribed BDS as the minimum qualification but stipulated preference for higher dental qualification. This Court held at SCC pp.285-86 para 7 as under :
>
> > "7.Admittedly, in the advertisement which was published calling for applications from the candidates for the posts of Dental Officer it was clearly stipulated that the minimum qualification for the post is BDS. It was also stipulated that preference should be given for higher dental qualification. There is also no dispute that MDS is a higher qualification than the minimum qualification required for the post and Respondent 1 was having that degree. The question then arises is whether a person holding MDS qualification is

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entitled to be selected and appointed as of right by virtue of the aforesaid advertisement conferring preference for higher qualification? The answer to the aforesaid question must be in the negative. When an advertisement stipulates a particular qualification as the minimum qualification for the post and further stipulates that preference should be given for higher qualification, the only meaning it conveys is that some additional weightage has to be given to the higher qualified candidates. But by no stretch of imagination it can be construed to mean that a higher qualified person automatically is entitled to be selected and appointed. In adjudging the suitability of person for the post, the expert body like Public Service Commission in the absence of any statutory criteria has the discretion of evolving its mode of evaluation of merit and selection of the candidate. The competence and merit of a candidate is adjudged not on the basis of the qualification he possesses but also taking into account the other necessary factors like career of the candidate throughout his educational curriculum, experience in any field in which the selection is going to be held, his general aptitude for the job to be ascertained in course of interview, extra-curricular activities like sports and other allied subjects, personality of the candidate as assessed in the interview and all other germane factors which the expert body evolves for assessing the suitability of the candidate for the post for which the selection is going to be held. In this view of the matter, the High Court in our considered opinion was wholly in error in holding that a MDS qualified person like Respondent 1 was entitled to be selected and appointed when the Government indicated in the advertisement that higher qualification person would get some preference. The said conclusion of the High Court, therefore, is wholly unsustainable and must be reversed."

Ultimately in para 19, the Hon'ble Supreme Court laid down the ratio in the following terms:

'19.In the instant case, the requisite academic qualification for the post of Medical Officer of

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> Homeopathy as prescribed in the advertisement was a recognised degree in homeopathy or a recognised diploma in homeopathy. A proviso has been added that preference will be given to degree-holders. This would mean that a recognised diploma in homeopathy prescribed in the advertisement is also a required minimum educational qualification with which they are entitled to compete with those candidates possessing the degree. The word "preference" would mean that when the claims of all candidates who are eligible and who possess the requisite educational qualification prescribed in the advertisement are taken for consideration and when one or more of them are found equally positioned, then only the additional qualification may be taken as a tilting factor, in favour of candidates vis-a-vis others in the merit list prepared by the Commission. But preference does not mean en bloc preference irrespective of inter se merit and suitability."

A reading of the above decisions of the Hon'ble Supreme Court thus disclose that award of weightage marks for better qualifications is not a new phenomena. Similarly, in the case on hand, when the State has decided to award weightage marks for holders of Ph.D. qualifications and M.Phil candidates with SLET or NET in order to go in for selection of better qualified persons and when holders of P.G.Degree with SLET or NET are treated on par with the holders of Ph.D or M.Phil with SLET or NET, in the same line of reasoning there should be grant of weightage marks for P.G. holders with SLET or NET.

30. In fact in the course of the hearing of these writ petitions, the learned Advocate General in his submissions stated that the State Government is also seriously considering the grant of separate weightage marks for holders of Ph.D. or M.Phil with SLET or NET or P.G. with SLET or NET separately.

31. Therefore, on consideration of the above factors and the arguments advanced by the respective counsel for the parties, we are convinced that grant of weightage marks in the matter of selection of a Lecturer cannot be held to be wholly illegal or uncalled for. However, we are not able to approve of the wide gap shown as between the holder of a Ph.D and a candidate with P.G. degree with SLET or NET. We are of the view that though there can be no two opinions that Ph.D. is academically a higher qualification and therefore, there can be a higher weightage marks for holders of Ph.D. when compared with P.G.degree holders even with SLET or NET, but yet the award of such marks as between the above two categories cannot create a high disparity as between

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those two categories and thereby providing scope for P.G.degree holders likely to be totally eliminated irrespective of holding a NET or SLET by virtue of very high weightage marks being granted to Ph.D. degree holders.

32. With that view when, we consider the prescription made in paragraph 11 of the prospectus and also the stand of the State Government that it is prepared to consider the grant of weightage marks for P.G. degree holders with SLET or NET, in our view, marginal adjustment in the grant of marks would serve the purpose and meet the ends of justice which will also not create any heartburn amongst the persons holding different academic qualifications. In fact, in the proposed variations to be made in the award of weightage marks it was suggested by the learned Advocate General that the weightage marks are likely to be awarded as under:

Sl. No.	Description of category	Weightage / Marks
1	Teaching experience in Government / Aided Colleges / Universities / Self Financing Colleges in the approved post	15
2	Ph.D. Qualification	12
3	M.Phil with SLET/NET	6
4	P.G. with SLET/NET	5
5	Research Contribution /Books / Articles Published	5
6	Interview	7
	TOTAL	50

In our considered opinion, there should not be a wide gap as between Ph.d. qualified candidate and a P.G. candidate with SLET or NET or M.Phil holder with SLET or NET in the award of weightage marks. We are of the view that even in the event of the State Government going in for the alteration of the weightage marks, such alteration and provision of weightage marks for a P.G. candidate with SLET or NET should harmonize both the channels in the matter of selection and should not result in elimination of one group for the other. Keeping the above perception in mind, when we considered the modification in the award of marks which is stated to be in the anvil, we find that the award of 12 marks to a Ph.D holder as compared to 6 and 5 marks for M.Phil and P.G. candidates with SLET or NET will not get the desired result. In fact, in the statement furnished by the learned Advocate General it was stated that as against 3,108 Ph.D. Degree holders, amongst whom there are 603 candidates with SLET or NET, the P.G. Degree holders with SLET

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or NET are stated to be 5028 and M.Phil candidates with SLET or NET are stated to be 3,546. Since the total number of posts are stated to be 1000 plus 20, in the interest of justice and in order to ensure that proper distinction is maintained among all the eligible three categories, it will be appropriate that the award of marks for Ph.D.Degree holders on the ground that they are in possession of higher academic qualification should not be doubled but can be marginal as between one category and the other.

33. In this context, it will also be appropriate to note that the present selection is for the post of Lecturers which is the entry level post. Though the holders of Ph.D. Degree can claim themselves to be holding higher academic qualification and such higher academic qualification may be the required qualification, vis-a-vis, the higher post like Reader, Professor, etc., as compared to the post of Lecturers, in our considered opinion, the most appropriate qualification would be P.G. or M.Phil with SLET or NET as the recruitment of Lecturer is merely for teaching such of those candidates who would require such trained academicians who would be able to impart education at that level in a most efficient and better manner while a Ph.D. Degree holder would be able to impart education effectively to the candidates of P.G. level and still higher levels befitting the level of uptake of candidates at that level. We say so because, even though the holder of a Ph.D. Degree is undoubtedly a candidate with a superior qualification, when it comes to the question of recruitment at the entry level for the post of a Lecturer, applying the ratio of the Hon'ble Supreme Court, a P.G. or M.Phil candidate with SLET or NET will be able to impart education to the students undergoing U.G.course in a far better manner compared with a student undergoing P.G.course or any higher course for whom the holder of a Doctorate may be more appropriate. It is relevant to note that the uptake of a student undergoing P.G.course or any other higher course will be far superior than a U.G. student for whom a P.G. candidate or an M.Phil candidate with SLET or NET will be better suited. In this context, we refer to the decision of the Hon'ble Supreme Court reported in 2003 (3)SCC 541(P.M.LATHA AND ANOTHER V. STATE OF KERALA AND OTHERS) and 2003 (3) SCC 548 in the case of YOGESH KUMAR AND OTHERS V. GOVT. OF NCT, DELHI. The Hon'ble Supreme Court has laid down the ratio in the following terms:

> "There is no force in the argument that B.Ed. qualification is a higher qualification than TTC and therefore the B.Ed.candidates should be held to be eligible to compete for the post. On behalf of the appellants it is pointed out that Trained Teacher's Certificate is given to teachers specially trained to teach small children in primary classes whereas for B.Ed. Degree, the training imparted is to teach

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students of classes above primary. B.Ed. Degree-holders, therefore, cannot necessarily be held to be holding qualification suitable for appointment as teachers in primary schools."

Therefore, looked at from any angle, we are convinced that the weightage marks to be awarded to P.G.Degree holders with SLET or NET, M.Phil with SLET or NET and Ph.D. cannot be prescribed with a very wide gap. In that respect even if the proposal of the State Government to provide the weightage marks of 5 for P.G. degree holders with SLET or NET and 6 for M.Phil. candidate with SLET or NET by reducing the weightage marks to the level of 9 for Ph.D degree holders from 12 would meet the ends of justice. To the above we add that the M.Phil holder of pre 31.12.1993 can also be equated with the M.Phil holder with SLET or NET in order to gain the weightage marks of 6 to be prescribed.

34. The learned Advocate General in his submissions also stated that the marks to be awarded under the heading teaching experience is likely to be lowered as 2 marks for each completed year subject to the maximum of 15 marks. Such an alteration in the prescription is quite reasonable and therefore, we do not find any thing wrong in such a proposal of the State Government. Since in our considered opinion the award of 9 marks for Ph.D. degree holders would be more appropriate, the excess 3 marks can be added to the interview marks of 7 by making it as 10 so that the selection committee will be in a better and comfortable position to assess the suitability of candidates based on the relevant criteria prescribed in the U.G.C.Regulations, namely, aptitude for teaching and research, ability to communicate clearly and effectively and ability to analyse the discussion which would be much more relevant criteria while making the selection from among the eligible candidates for the post of Lecturers.

35. With the above modification in the award of marks, namely, the provision of 9 marks for Ph.D degree holders and enhancing the interview marks from 7 to 10 and also providing 5 marks for the holders of P.G.degree with SLET or NET and 6 marks for M.Phil candidates with SLET or NET with the maximum of 15 marks for experience and 5 marks for research contribution, books, articles published will be more appropriate while going in for the selection of candidates for the post of Lecturers.

36. For all the above reasons, we hold that the prescription of marks as prescribed in paragraph 6(e) of G.O.Ms.No.197, dated 05.07.2006, as amended in the Letter dated 11.08.2006 as well as paragraph 11 of the prospectus annexed to the Advertisement.No.4/2006-07 cannot be sustained which are accordingly set aside with the direction to the first respondent

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State to issue suitable amended notification in the light of the marks as suggested in this order.

37. Having regard to our conclusion, as regards the challenge made to the U.G.C notification dated 14.6.2006 which is covered by the earlier Division Bench decision of this Court in W.P.No.21435/2006 dated 10.7.2006, W.P.Nos. 32958/2006 and 36972/2006 are dismissed. Consequently, connected pending Miscellaneous Petitions in W.P.Nos.32958/2006 and 36972/2006 are also dismissed. No costs.

38. As far as the contention made by the petitioner in W.P.No.39366/2006 as well as 41001/2006 based upon the procedure rules of Teachers Recruitment Board, we hold that merely because in G.O.Ms.No.1357 dated 26.9.1990 the recruitment of the post of Lecturers was also entrusted with the Teachers Recruitment Board that by itself will not straightaway make the procedure rules applicable to recruitment of School teachers apply ipso facto to the recruitment of College Lecturers. In fact, Rule 2 of the Rules of procedure of the Teachers Recruitment Board specifically mentions that the said rule apply to the following categories.

> "2.APPLICATION
>
> These rules shall apply to the following categories of posts :-
>
> (i) posts in Government Schools (School Education Department) which were under the purview of the Tamil Nadu Public Service Commission and have now been taken out of its purview.
>
> (ii)Out of the posts in Local Body (Panchayat Union, Municipal and Corporation) schools, posts which are analogous to the posts mentioned under (i) above."

By no stretch of imagination the post of School teacher can be equated to the post of College Lecturer and therefore, the prescription contained in Rule 7 of the said Rules providing for the weightage marks for the period of waiting for employment after registration in the Employment Exchange can have no application to the selection to be made for the post of Lecturers. Therefore, the grievance expressed by the petitioners based on the above rules of procedure and G.O.Ms.No.1357 dated 26.9.1990 does not merit any consideration. Therefore, no relief can be granted based on the above contention.

39. In the result, W.P.Nos. 32958 and 36972 of 2006 and all the connected Miscellaneous Petitions are dismissed. All the other

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writ petitions are partly allowed and while setting aside the prescription of marks as prescribed in paragraph 6(e) of G.O.Ms.No.197, dated 05.07.2006 as amended in the Letter dated 11.08.2006 as well as paragraph 11 of the prospectus annexed to the Advertisement No.4/2006-07, the First respondent State is directed to issue suitable amended notification as directed in paragraphs 33 to 35 of this Order. Consequently connected pending Miscellaneous Petitions are closed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sal

To

1.The Secretary to Government,
State of Tamil Nadu
Higher Education Department,
Fort St.George,
Chennai 600 009.

2.The Chairman,
Teachers Recruitment Board,
E.V.K.Sampath Maligai,
D.P.I.Compound, Chennai 600 006.

3.The Chairman,
University Grants Commission, (UGC)
Bahadurshah Zafar Marg,
New Delhi 110 022.

4.The Secretary to Government
Union of India
Ministry of Human
Resources Development,
New Delhi. 110 001

5. The Director,
The Directorate of Collegiate
Education, College Road,
Chennai. 6

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6.The Registrar
University of Madras
Chepauk, Chennai

7. The Secretary to Government
Education Department
Fort St. George, Chennai-9.

8.The Member Secretary
Teachers Recruitment Board,
E.V.K.Sampath Building,
College Road, Chennai 600 006

9. The Secretary
Teacher Recruitment Board,
EVK Sambath Buildings,
College Road, Chennai-6.

1 cc to Mr.D. Saravanan, Advocate, SR. 19099
2 ccs to Mr.R. Subramanian, Advocate, sr. 19119, 19120
1 cc to Mrs. Gladys Daniel, Advocate, sr. 18540
1 cc to Mrs. M.V. Krishnan, Advocate, sr. 18940
1 cc to Mr.R. Sassetharan, Advocate, SR. 18802
1 cc to Mr.P.R. Gopinathan, Advocate, SR. 19341
1 cc to the Government Pleader, High Court, Madras, Sr. 18691
2 ccs to Mr.R. Bharath Kumar, Advocate, sr. 19093, 19094
2 ccs to Mr.P. Viswanatha Kakkan, Advocate, Sr. 15848, 15849

W.P.Nos.37000,37021, 37022, 32958, 36972, 39366, 40388, 40995, 41000, 41001 W.P.(MD). Nos.9279/2006, 9806/2006 & 9454/2006

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